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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 115

GENERAL MOTORS CORPORATION, *Appellant*,

v.

STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARK SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS

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STATE PRINTING PLANT OLYMPIA, WASH., 1963

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1071

GENERAL MOTORS CORPORATION, *Appellant*,

v.

STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARK SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington, *Appellees*.

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STATE PRINTING PLANT OLYMPIA, WASH., 1963

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS

Pursuant to Rule 16 of the Rules of the United States Supreme Court, appellees respectfully request that this court enter an order dismissing the appeal on the ground that this case does not present a substantial federal question.

STATUTES INVOLVED

The essential Washington statutes involved in this proceeding are sections 220 and 270 of chapter 82.04 of the Revised Code of Washington. (Cited "RCW", i. e. "RCW 82.04.220.")

RCW 82.04.220 identifies the legal incidence of the tax involved here as a "* * * tax for the act or privilege of engaging in business activities."[1]

The "measure" of the tax involved here is defined in the second sentence of RCW 82.04.220, *supra*, as the product of the "* * * rates against value of products, gross proceeds of sales or gross income of the business, as the case may be." (RCW 82.04.220, *supra*.)

This case involves but one classification of Washington tax: "Wholesaling." Wholesaling is defined by the Washington legislature so as to provide for imposition of the tax. "Upon every person * * * engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate * * *" (of .003 during the audit period involved (RCW 82.04-.270(1)).

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[1]The complete text of Section 82.04.220 of the Revised Code of Washington provides:

"There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be."

COUNTER-STATEMENT OF FACTS

1. INTRODUCTION.

The facts upon which the decision appealed from is based, and upon which this motion is based, are contained in a voluminous record which was carefully reviewed by the supreme court of the State of Washington. (See Decision of the Washington Court, Appendix B of Juris. St.) The counter-statement set forth hereinbelow is offered by appellees, in order to (1) identify the business activities engaged in within the State of Washington by General Motors (appellant); (2) ascertain the relationship between those activities and the sales included in the measure of the tax involved in this case; (3) ascertain whether the tax impinges upon interstate commerce so as to be repugnant to the commerce clause of the United States constitution (Art. I, § 8), and (4) to ascertain whether the tax can be said to violate the due process clause of the United States constitution (Fourteenth Amendment, § 1).

By its characterization of the problem and formulation of the issues of this case, appellant would have this court assume that General Motors engages in practically no identifiable local activity. But as the Washington state supreme court's opinion and the voluminous record below show, the facts are otherwise.

2. THE FACTS.

General Motors is a Delaware corporation qualified to do business in the State of Washington. The trial court found that during the audit period in question General Motors did engage in business activities within the State of Washington.

General Motors engages in business in the State of Washington through several divisions and subsidiaries; however, only the activities of Chevrolet, Pontiac, Oldsmobile, and General Motors Parts Divisions are directly involved in this action.

The courts below found that the activities of the divisions of General Motors involved in this proceeding included

> "* * * the sale of automobiles, trucks, parts and accessories to retail dealers, and, also, included the establishment and maintenance of effective dealer representation, partially accomplished by arranging various sales and incentive contests and programs offered and conducted, separately or jointly, with the dealer and other components of the General Motors organization; national and local advertising programs conducted by General Motors through various media; joint programs conducted at the dealer's place of business to assist the dealer in maintaining and developing a prosperous used-car department, including training of dealer's service personnel in the art of reconditioning automobiles utilizing mobile trainers; and on the job training of dealer employees seeking to develop a strong and capable service department so as to increase the quality of service rendered to the retail purchaser of General Mo-

tors' products." (Opinion of State Supreme Court, Juris. St. 5a.)

It is clear from the record that General Motors accomplishes its primary purpose of making wholesale sales of its manufactured products by its emphasis upon the establishment of and maintenance of its retail dealer organization. Thus,

> "General Motors achieves its wholesale sales of the automobiles, trucks, parts and accessories by the development and maintenance of a strong retail dealer representation; and General Motors' zone employees, including district managers, are charged with the responsibility of developing, maintaining, and promoting retail dealer representation, along with the general duties of promoting, developing, and maintaining good will and public esteem for General Motors' products. The trial court found that the activities of the field organization have a direct effect upon the sales and operations of the independent retail dealers." (Opinion of State Supreme Court, Juris. St. 7a.)

To achieve a "strong" retail dealer organization and hence to make wholesale sales, General Motors maintains a field organization which ministers to the needs of the dealers and supervises compliance with the terms of a standard written contract called a "Dealer Selling Agreement" which is in all material respects uniform for all dealers in the state.

> "The dealer's facilities are his own. He provides the tools, supplies, signs, and an inventory of parts and accessories. New and used automobiles are also owned by the dealer, subject, in the case of new automobiles, to financing arrangements with banks or finance companies,

which frequently include General Motors Acceptance Corporation, a wholly owned corporate subsidiary of General Motors. The 'Dealer Selling Agreement' provides certain restrictions on the dealers' use of their own facilities and equipment. A dealer is expected to maintain a place of business, a sales room, and a service department satisfactory to General Motors. The dealer may not establish or move a branch sales office or service organization without written consent of General Motors. Every dealer is required to, and does, submit his books, records, and accounts to General Motors, and to maintain a satisfactory uniform accounting system designated by General Motors. Every dealer is required to meet minimum capital requirements as specified and determined by General Motors. Every dealer is required to, and does, maintain and erect uniform or standard product signs and is required to, and does, participate in advertising campaigns conducted nationally and locally by General Motors. Every dealer is required to carry in stock at all times parts and accessories sufficient to provide prompt and satisfactory service to retail purchasers of General Motors products. Dealers uniformly agree to buy such special tools as are developed by General Motors for the servicing of their products." (Opinion of State Supreme Court, Juris. St. 8a.)

Each retail dealer is assigned a "zone of influence" within which he enjoys the distinction of being the only retail outlet for the specific product for which he is dealer. More important, he is also considered responsible for the development of the General Motors' share of the retail market within his designated "zone of influence." The "sales objective" of the dealers is arrived in "consultation"

with the dealer to determine what the dealer should stock and sell. Once that projection and estimate has been made and a meeting of the minds between the district manager and the dealer arrived at, the dealer places individual orders on a separate form to specify color option, etc. (Tr. 0203). These projections are monthly (Tr. 0040) and are considered to be orders (Ex. 5, PN-19a, "Zone Office Manual").

If a dealer's orders are less than the "projections" of "sales objective," representatives of the particular division of General Motors "counsel and advise" the dealer to determine why the sales objective is not being accomplished, and to assist the dealer in taking "corrective action." (Opinion of State Supreme Court, Juris. St. 10a).

But long before the event of "counseling and advising," General Motors' representatives have busied themselves in "local activity" at the dealer's place of business and elsewhere in the State of Washington aimed at accomplishing its wholesale sales objective in this state. The General Motors' representative trains the retail dealer's salesmen, participates with the dealer in conducting sales contests, trains the dealer's mechanics, investigates customer complaints, trains the dealer's parts managers and accountants, and conducts joint programs at the dealer's place of business to assist the dealer in maintaining a prosperous used car department. The dealer's finances are even scrutinized in carrying out the General Motors' program of maintaining

a "strong" dealer organization, because a strong dealer can meet competition, assures better customer relations, and hence a greater volume of sales of General Motors' manufactured products.

The taxes in question were measured by the gross proceeds from wholesale sales by General Motors to its retail dealers in the State of Washington under the following designations:

1. Chevrolet Class A Transactions.
2. Chevrolet Class B, Oldsmobile and Pontiac Transactions.
3. General Motors Parts Transactions.

Chevrolet Class A Sales

All of the activities described above were performed in connection with Chevrolet Class A sales. In addition, a Seattle branch office, operating under direction of the Portland zone office, participated in these sales by expediting deliveries and performing additional promotional work. It should be noted here that since January 1, 1954, General Motors has maintained a "zone office" in Seattle for its Chevrolet division. Its activities are taxed, and such taxes since 1954 are not in dispute here (Tr. 0035). Such taxes are measured only by the gross proceeds of sale to General Motors' Washington dealers (RCW 82.04.270).

Chevrolet Class B, Pontiac and Oldsmobile Transactions.

All of the activities described above are performed in connection with Chevrolet Class B sales,

Pontiac and Oldsmobile. Thus, the extent or degree of local activity for which the tax is being imposed is the same as in Chevrolet Class A except for the absence of a fixed physical facility with the name of the particular division on the office door. However, it should be noted that district managers in all cases receive mail and telephone calls at their homes and also conduct much of their business at the dealer's place of business or in the dealer's locale.

General Motors Parts Transactions.

The gross proceeds from sales of parts to General Motors dealers in Washington have been separated from the other categories. General Motors parts are sold to dealers in the State of Washington through two parts warehouses: One in Washington and one in Oregon. If the warehouse in Seattle does not stock a particular item, it is shipped from Portland.

Although General Motors parts division does not have a field organization similar to that of other divisions, personnel from other divisions who do work with the retail dealers carry out General Motors policies by means of the enforcement of the provisions of the Dealer Selling Agreement.

The sales of General Motors parts distributed from the Seattle warehouse have been included in the measure of General Motors' tax. This portion of General Motors' tax is not in dispute here. However, General Motors disputes the inclusion of the

gross proceeds from sales of parts to retail dealers in Washington which were distributed from General Motors' Portland, Oregon, warehouse.

COUNTER-STATEMENT OF THE ESSENTIAL QUESTIONS OF LAW INVOLVED IN THIS CASE

In its attempted definition of the usual "due process" and "interstate commerce" questions which seem to be typical of attacks upon state and local taxes, appellant characterizes taxable local activities of General Motors as so *de minimis* or negligible as to defy taxation at the state level as a matter of due process. It also misstates the statutory nature and incidence of the tax. Appellees respectfully submit that appellant should have stated the questions more objectively as follows:

1. *Due Process.*

Is a Washington Tax which is imposed upon persons for the act or privilege of engaging in business activities within the state and which is measured by the gross proceeds from wholesale sales to customers within the state, repugnant to the due process clause of the United States constitution when applied to a multi-state corporation which makes wholesale sales to retail dealers located within the state and, in connection with such sales, engages within the state in the following activities:

(a) Regular and constant contact with each dealer at the dealer's place of business

through "district managers" whose duties include the responsibility to maintain the required dealer organization in the territory assigned to him and to promote the business of the division in this territory. In carrying out this responsibility, the district manager is to contact assigned dealers or branches in a supervisory or advisory capacity to see that they have the proper sales organization and to acquaint them with the divisional sales policies and promotional and training plans to improve the selling ability of the sales organization. His duties include contacting assigned dealers or branches at designated intervals and securing orders for the division's products; assisting the outlet's sales manager in organizing and training its sales force; assisting in controlling the used product inventory; and advising outlets of changes in divisional policies; passing on to dealers any knowledge gained of competitive products and being responsible for closing open points.

(b) Regular and frequent training schools, sales meetings, and other meetings to improve various aspects of the dealer's business and thus increase wholesale sales to the dealer.

(c) Other local activities of other personnel and other "divisions" and subsidiaries of the taxpayer which are directed toward stimulation of retail customer satisfaction, and trade through service.

2. *Interstate Commerce—Undue Burden.*

Is such a tax repugnant to the commerce clause of the United States constitution on the grounds that

(a) Such a tax impinges upon and imposes an undue burden upon interstate commerce?

(b) Such a tax imposes multiple burdens upon interstate commerce?

3. *Interstate Commerce—Discrimination.*

Is such a tax which is applicable to all who engage in the business of making sales at wholesale within the State of Washington repugnant to the commerce clause when it fails to tax Washington manufacturers with respect to their manufacturing activities, if the gross proceeds from sales of such manufactured products have been included in the measure of the Washington tax on wholesaling activities?

THE APPEAL DOES NOT PRESENT A "SUBSTANTIAL" FEDERAL QUESTION

Introduction

Underlying all of the arguments made by the appellant in its jurisdictional statement before this court, and underlying all of the disagreements between appellant and appellees in the court below, is a basic factual problem which, the appellees feel, should be made clear to this Court. This is the problem of characterizing the activities of appellant's

personnel in Washington state. Appellant would characterize these activities as *de minimis*, and would equate them with the activities of itinerant drummers or "missionary men," such as those discussed in *Nippert v. Richmond*, 327 U. S. 416 (1946).

The Washington state supreme court, along with appellees, give these activities a completely different characterization. As shown by the passages of the opinion of the state supreme court, quoted in appellees' counter-statement, the key to General Motors' wholesaling operations is the maintenance of its "quality dealer organization," (Tr. 0134) and the key to the maintenance of this organization is the constant activity and contact of the General Motors' field organization with its dealers in the State of Washington. In order to insure success of its wholesaling activities this activity and contact carried on through personnel, both resident and non-resident personnel, is large enough and extensive enough to pervade every single aspect of the dealer's business. (This characterization applies to all classes of transactions; in addition, Chevrolet Class A sales involved participation of a local branch office.)

In short, appellees agree completely with appellant's statement that: "The controlling consideration is the *character* of General Motors' in-state activities." (Juris. St., p. 12; emphasis in original.) Appellees, on the other hand, disagree completely with the character which appellant gives these activities.

A. NORTON CO. V. DEPARTMENT OF REVENUE IS DISPOSITIVE OF THIS APPEAL.

Norton Co. v. Department of Revenue, 340 U. S. 534 (1951), disposes of the same "due process" and "interstate commerce" arguments now made by General Motors here. Unless the instant decision of the supreme court of the State of Washington can be said to be inconsistent with *Norton*, there is no new different or substantial federal question presented by this appeal.

It is true that the *Norton* case involved factual situations where the taxpayer conducted certain activities through a local office.

However, as the Washington state supreme court forcefully stated,

> "* * * absence of a local office does not render the conclusion automatic that sufficient nexus to validate a tax is lacking. The essential inquiry must be directed to the amount and effect of the activities involved and not the form of the operations. * * *" (Juris. St., p. 15a.)

West Publishing Co. v. McColgan, 328 U. S. 823 (1946), provides adequate authority for the Washington court's position, and a complete answer to any argument that presence of an office is essential in order to sustain state taxing power.

> "* * * The opinion [*West Pub. Co. v. McColgan, supra*] was not grounded on the triviality that office space was given West's solicitors by attorneys in exchange for the chanceful use of what books they may have had

on hand for their sales activities. * * *" *Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959), at 461.

West Publishing Company cited as one of the controlling cases, *International Shoe Co. v. Washington*, 326 U. S. 310 (1945), which did not involve any office at all.

Although it is appellees' position that presence of a local office is not an essential prerequisite to state taxing power, it should be noted that General Motors' field representatives are in effect "officed" within the state by virtue of the use of private homes for receipt of business mail and telephone calls.

Accordingly, the only factor of any significance distinguishing the *Norton* case from the present factual situation (the fact that some activities are not carried on through an office, with a sign on the door, physically located in Washington) is not of sufficient importance to prevent the *Norton* case from being dispositive of appellant's contentions in this appeal.

B. DUE PROCESS: THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AS TO DUE PROCESS. [Appellant's Question No. 3; Appellees' Question No. 1.]

In *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435 (1940), this court applied basic rules concerning "due process" limitations upon the powers of the states to impose taxes which seem applicable here, even though we are dealing here with a different type of tax.

> "The Constitution is not a formulary. It does not demand of states strict observance of rigid categories nor precision of technical phrasing in their exercise of the most basic power of government, that of taxation. For constitutional purposes the decisive issue turns on the operating incidence of a challenged tax. A state is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly, civilized society.
>
> "Constitutional provisions are often so glossed over with commentary that imperceptibly we tend to construe the commentary rather than the text. * * * These tags are not instruments of adjudication but statements of result in applying the sole constitutional test for a case like the present one. That test is whether property was taken without due process of law, or, if paraphrase we must, whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. * * *" *Wisconsin v. J. C. Penney Co.*, *supra*, 444.

This court has held that a market state may impose a tax, measured by gross receipts, when the only in-state activity of the taxpayer is the forwarding of orders through its local office, from in-state customers to its out-of-state headquarters, or the breaking down of shipments for such in-state customers. *Norton v. Dept. of Revenue*, 340 U. S. 534 (1951) *supra*.

Unless we are to reduce application of the due process clause to a matter of "tags," i.e., "office"

and "no office", it is clear that application of the gross receipts tax is even fairer in this case than in *Norton*. For in this case local personnel secure orders, and do not just forward them; and local and nonresident personnel are constantly operating in this state and pervading every aspect of the dealer's business.

The standards of fairness applied in *Norton* are certainly more than met here. For here we have, not just mechanical forwarding, as a convenience to the customer, of orders, or breaking down of shipments of merchandise; we have instead constant and extensive in-state operations which are absolutely necessary for and indeed the key to the entire wholesaling operation.

C. INTERSTATE COMMERCE—THIS TAX ON LOCAL ACTIVITIES DOES NOT IMPOSE AN UNDUE BURDEN ON INTERSTATE COMMERCE. [Appellant's Question No. 1; Appellees' Question No. 2.]

In its discussion of its first question (corresponding to appellees' second question), appellant would compartmentalize the activities of a multistate business into intrastate, interstate, and extrastate activities. Such a compartmentalization completely misconstrues the problem. For appellant contends that, before the State of Washington can tax its local activities, it must be shown that these local activities are strictly intrastate in character, and constitute a separable local business (Juris, St. pp. 11 and 12).

Norton v. Dept. of Revenue, supra, holds otherwise. For in *Norton* the activities of the Norton Company, in forwarding orders from its Illinois customers to its out-of-state headquarters, or in breaking down shipments, certainly did not constitute any separable local business, completely divorced from interstate commerce. "The Illinois Supreme Court recognized that it was dealing with interstate commerce." *Norton v. Dept. of Revenue*, 340 U. S. at p. 536.

This statement can also be made with regard to the decision of the Washington state supreme court in this case. And we may also say of this case:

> "This case serves to remind once more that courts do not adjudicate abstractions, such as, 'What is interstate commerce?' * * *" *Central Greyhound Lines v. Mealey*, 334 U. S. 653 (1948), at p. 655.

The Washington state supreme court, accordingly, applied the test in effect set down by *Norton*, and the only realistic test possible, viz., considering the nature and extent of the taxpayer's in-state activities, is the tax on those activities and undue burden upon interstate commerce? Appellant submits that it is not.

The states have authority to impose taxes upon "persons engaging in business" within the taxing state, "measured" by the taxpayer's gross receipts. *Western Livestock v. Bureau of Revenue*, 303 U. S. 250 (1938); *Field Enterprises v. State*, 47 Wn. (2d) 852, 280 P. (2d) 1010, *aff. per curiam* 352 U. S. 806

(1955); *B. F. Goodrich Co. v. State*, 38 Wn. (2d) 663, 231 P. (2d) 325, *cert. den.* 342 U. S. 876 (1951); *Norton v. Dept. of Revenue*, 340 U. S. 534 (1951); *American Mfg. Co. v. St. Louis*, 250 U. S. 459 (1919).[3]

A tax may be imposed upon a person whose local activities are part of the taxpayer's interstate operations, as long as the tax is not discriminatory as to interstate commerce. *Central Greyhound Lines, Inc. v. Mealey*, 334 U. S. 653 (1948); *Spector Motor Service v. O'Connor*, 340 U. S. 602 (1951); *Western Livestock v. Bureau of Revenue*, 303 U. S. 250 (1938); *American Mfg. Co. v. St. Louis*, 250 U. S. 459 (1919); *Northwestern States Portland Cement Co. v. Minnesota, Williams v. Stockham Valves*, 358 U. S. 450 (1959); *Scripto, Inc. v. Carson*, 362 U. S. 207 (1960); *Norton v. Dept. of Revenue, supra; B. F. Goodrich v. State, supra; Field Enterprises v. State, supra.*

Nor has General Motors shown that any of the items included in the measure of its tax here are so clearly "interstate in character that the State could not reasonably attribute its proceeds to the local business * * *" *Norton v. Dept. of Revenue, supra.*

From the foregoing basic premises, we submit that the taxes assessed by appellees are constitutional

[3]Cf. Northwestern States Portland Cement Co. v. Minnesota, Williams v. Stockham Valves, 358 U. S. 450 (1959); Scripto, Inc. v. Carson, 362 U. S. 207 (1960); *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435 (1940).

and that no substantial federal question as to interstate commerce is presented because

(a) General Motors is a "person" engaged in extensive local activities.

(b) General Motors' extensive local activities are directly and obviously connected with those sales, the gross proceeds of which were included in the measure of tax which the state may rightfully impose upon it for the privilege of engaging in such activities within the state.

(c) General Motors' local activities were essential to the completion of the sales, the gross proceeds of which were used to measure the tax.

(d) The fact that General Motors is a multistate operation and the fact that the sales used to measure the tax are consummated "over state lines" does not defeat the tax or change its character so as to render it repugnant to the commerce clause.

It is to be noted that the *appellant argues not that the tax should be reduced* or that it should be apportioned—rather, it argues that General Motors should be exempt from the Washington tax on its local activities because General Motors' operations embrace all fifty states of the Union. Thus, General Motors argues not for tax equality for multi-state business enterprises, but for inequality in its favor.

D. THE TAX DOES NOT IMPOSE A "MULTIPLE BURDEN" ON INTERSTATE COMMERCE. [Appellant's Question No. 1; Appellees' Question No. 2.]

Previous discussion has highlighted the applicability of the following principles of law as announced by this court, which are dispositive of any commerce clause issues in this case. Interstate commerce must bear its share of state taxation and "the bare fact that one is carrying on interstate commerce does not relieve him from many forms of state taxation which add to the cost of his business." *Western Livestock v. Bureau of Revenue*, 303 U. S. 250 (1938).

Local business activities may be an incident of state taxation even though the activities are part of a multi-state operation. *Western Livestock v. Bureau of Revenue, supra.*

Absent discrimination against interstate commerce, a tax on local business activities of a multi-state business enterprise is not repugnant to the commerce clause unless it is affirmatively shown that a "multiple burden" on interstate commerce exists. *Northwestern States Portland Cement Co. v. Minnesota, Williams v. Stockham Valves*, 358 U. S. 450 (1959).

> "* * * There is nothing to show that multiple taxation is present. We cannot deal in abstractions. In this type of case the taxpayers must show that the formula places a burden upon interstate commerce in a constitutional sense. This they have failed to do." *Northwestern States Portland Cement Co. v. Minnesota*, 358 U. S. 450, at p. 463.

The burden is upon the taxpayer to show the disassociation between in-state business activities and the gross proceeds which are included in the measure of taxation. *Norton v. Dept. of Revenue, supra.*

When these legal principles are applied to the facts of the instant case there can be no other conclusion than that "multiple burdens" do not exist.

The tax in question impinges only on local business activities. The measure of the tax includes only those sales attributable to those activities. No other sales are included in the tax base.

Appellant has never attempted to establish a formula for determining the percentage of each sale occurring in the State of Washington that is attributable to its in-state business activities. Thus, applying the rule of the *Norton* case, *supra*, appellant has failed to disassociate any porton of the sales in question from its in-state activities.

It is alleged that a risk of multiple burdens exists because other states might enact a similar tax, measured by the same gross receipts as Washington uses in measuring its tax. See appellant's jurisdictional statement, p. 13. But it is never shown how this could result. No state could levy a tax upon the business activities taking place in Washington. Furthermore, no other state could impose a tax measured by the same gross receipts. *Gwin, White & Prince v. Henneford*, 305 U. S. 434 (1939); *J. A. Adams Mfg. Co. v. Storen*, 304 U. S. 307 (1938).

And there is therefore no more a risk of "multiple burdens" in this case than there was in the *Norton* case, *supra*. In short, there is no factual or legal basis that can establish the existence of "multiple burdens."

On this general question of multiple burdens, the following analysis by Mr. Justice Rutledge is persuasive, and, in fact, seems to have been followed by this Court. (Compare, on the one hand, *Gwin, White & Prince v. Henneford*, *supra*, and *J. A. Adams Mfg. Co. v. Storen*, *supra*, with *Norton v. Dept. of Revenue*, *supra*.)

> "If in this case it were necessary to choose between the state of origin and that of market for the exercise of exclusive power to tax, or for requiring allowance of credit in order to avoid the cumulative burden, in my opinion the choice should lie in favor of the state of market rather than the state of origin.[1] The former is the state where the goods must come in competition with those sold locally. It is the one where the burden of the tax necessarily will fall equally on both classes of trade. To choose the tax of the state of origin presents at least some possibilities that the burden it imposes on its local trade, with which the interstate traffic does not compete, at any rate directly, will be heavier than that placed by the consuming state on its local business of the same character. If therefore choice has to be made, whether as a matter of exclusive power to tax or as one of allowing credit, it should be in favor of the

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[1] Cf. Powell, New Light on Gross Receipts Taxes (1940) 53 Harvard L Rev 909; Lockhart, The Sales Tax in Interstate Commerce (1939) 52 Harvard L Rev 617; compare Gwin, White & Prince v. Henneford, 305 US 434, 83 L ed 272, 59 S Ct 325; J. D. Adams Mfg. Co. v. Storen, 304 US 307, 82 L ed 1365, 58 S Ct 913, 117 ALR 429.

state of market or consumption as the one most certain to place the same tax load on both the interstate and competing local business. Hence, if the risk of taxation by both states may be said to have the same constitutional consequences, under the commerce clause as taxation in actuality by both, the Arkansas [the market state] tax, rather than the power of Tennessee to tax, should stand.

"It may be that the mere risk of double taxation would not have the same consequences, given always of course a sufficient due process connection with the taxing states, that actual double taxation has, or may have, for application of the commerce clause prohibition. Risk of course is not irrelevant to burden or to the clogging effect the rule against undue burden is intended to prevent. But in these situations it may be doubted, on entirely practical grounds, that the mere risk Tennessee may apply its taxing power to these transactions will have any substantial effect in restraining the commerce such as the actual application of that power would have. In any event, whether or not the choice must be made now or, as I think, has been made, it should go in favor of Arkansas [the market state], not Tennessee." *International Harvester v. Dept. of Treasury*, 322 U. S. 340, at p. 361 (1944) (concurring opinion).

E. THERE IS NO SHOWING THAT THE TAX PROVIDES ANY COMMERCIAL ADVANTAGE TO INTRASTATE BUSINESS. [Appellant's Question No. 2; Appellees' Question No. 3]

It is true that Washington, by endeavoring to equalize the tax burden among all who engage in business activities within the state, has structured its tax statutes so that no one is required to pay both a manufacturing tax and a wholesaling tax with

respect to goods that a taxpayer both manufactures and wholesales within the state. See *Crown Zellerbach Corp. v. State*, 45 Wn. (2d) 749, 278 P. (2d) 305 (1954). Those who manufacture in the State of Washington and then sell products elsewhere are required to pay but one tax. Those who wholesale in Washington products grown or fabricated elsewhere pay but one tax, and those who manufacture locally for local markets are required to pay but one tax; so that local commerce does not have to bear the discriminatory burden of double taxation where competitors operating multi-state enterprises only paid one.

Appellant attempts to build an argument on the fact that Washington fails to tax local manufacturer-wholesalers twice. It is not enough, says appellant, that local wholesalers pay the same tax as we; in addition, says appellant, local manufacturers must pay the same tax as we pay to other taxing jurisdictions on our manufacturing operations; otherwise we are being discriminated against.

A large, multi-state operator like appellant cannot avoid occasioning taxes in several states. This is an accepted part of commercial life. There are license taxes and property taxes and franchise taxes and excise taxes of varying hues and hurts. If appellant's allegations are true, despite the absence of proof in the record, that a manufacturing tax is paid in St. Louis, there still can be no discrimination against interstate commerce—Washington's tax is a

wholesaling tax. The fact that appellant pays a manufacturing tax in St. Louis is no more relevant than the fact that it pays license taxes, and property taxes, and franchise taxes in other states. There is no multiple burden unless repeated exactions of the same nature occur. *Western Livestock v. Bureau of Revenue*, 303 U. S. 250 (1938).

THE QUESTIONS ARE NOT SUBSTANTIAL AS A MATTER OF PUBLIC IMPORTANCE

This court has stated in *Norton v. Department of Revenue*, 340 U. S. 534 (1951), *supra*, at 537:

> "Where a corporation chooses to stay at home in all respects except to send abroad advertising or drummers to solicit orders which are sent directly to the home office for acceptance, filling and delivery back to the buyer, it is obvious that the state of the buyer has no local grip on the seller. * * *"

This is the law as enunciated by this Court; and this is the law as applied by the Washington state supreme court in this case.

Appellant would have this Court believe that its activities in the State of Washington can be equated to those of simple drummers. Appellees, following the decision of the Washington state supreme court, submit that, on the contrary, the regular, all-pervasive, and continuous activities of General Motors personnel in the state show that General Motors is just as permanently established and localized in the state by the operations giving rise to the tax in question, as it is by its various offices and warehouses within the state.

The heart of appellant's argument for plenary review by this court is the proposition that the decision of the Washington state supreme court "* * * affects every business which does not have a participating office in the state but which ships to customers located within the state and which has any presence therein, however slight, * * *" (Juris. St., p. 19.) Consideration of the facts in this case shows that this is a gross exaggeration.

Appellant speaks of the "novel principle of this decision." (Juris. St., p. 20.) If there is any novelty or uniqueness to be found in this decision, it is because of the novel and unique character of General Motors' merchandising activities, and not because of the principles applied.

Appellant seems to consider P. L. 86-272 (73 Stat. 555, 15 U. S. C. § 381-84) of some relevance (Juris. St., p. 22). This law regulating state jurisdictions to impose net income taxes, is of some relevance, appellees agree, but not for the reasons given by appellant. It is relevant because it shows that any decision by this Court in this case could be applicable only to those relatively few states which have a tax similar in nature to the Washington tax here in question; any decision in this case could have no applicability to the much greater number of states whose taxing power falls within the scope of P. L. 86-272.

Appellant emphasizes the financial impact which this decision might have upon its operations

in the State of Washington. "* * * The accumulated liability for all Divisions for the ten years since that time [1953] runs to many hundreds of thousands of dollars. * * *"

Over two-thirds of the $320,000 mentioned by appellant is attributable to Chevrolet Class A sales, which involved participation by a Seattle branch office. Since January, 1954, there has been a Chevrolet Seattle zone office which covers the Chevrolet transactions formerly covered by the Seattle branch office; and appellant is and has been paying taxes on transactions attributable to this Seattle zone office.

Thus, it is clear that the decision below will have nowhere near the financial impact on appellant which the appellant, or the press release referred to, would suggest.

CONCLUSION

The unanimous decision of the Court below is in harmony with the principles of law announced by the decisions of this Court and the authorities discussed hereinabove. Appellees also submit that, in view of the relatively unique factual situation involved, and the general pattern of tax laws throughout the states, no question of substantial public importance is presented. This appeal, therefore, presents no substantial federal question, and should be dismissed.

Respectfully submitted,

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